IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7671 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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A'BAD MUNICIPAL TRANSPORT SERVICE

Versus

CHANDUBHAI CHATURBHAI VALAND

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Appearance:

1. Special Civil Application No. 7671 of 1997

MR HS MUNSHAW for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 05/02/2004

ORAL JUDGEMENT

The Ahmedabad Municipal Transport Service has approached this Court under Article 227 of the Constitution of India to challenge the award passed by

the Labour Court, Ahmedabad dated 2nd July, 1997 in Reference (L.C.A.) No. 2619 of 1994 whereby, it has been directed to reinstate the respondent on his original post and to pay him 40% of backwages.

2. The facts in short can be stated as under :-

2.1. The respondent at the relevant time was working with the petitioner as Conductor. On 4th October, 1990, he was served with the chargesheet which was passed on the complaint lodged against him on 28th September, 1990. It was alleged against him that while he was on duty on 27th September, 1990, in the bus of the petitioner, which was plied on route no. 51 at about 7:30 p.m. near Thaltej Talavadi bus-stand, surprise checking was carried out and it was found that one passenger who had boarded the bus, at village Shilaj and who was to go to village Thaltej Talavadi, though charged Re.1=00 towards the bus fare was not issued ticket by the respondent. Thus, it was alleged that the petitioner had committed misappropriation of Re.1=00. The statement of concerned passenger was recorded and his signature below it was obtained.

2.2. Pursuant to the said chargesheet, departmental inquiry was commenced against the respondent on 7th August, 1991. At the end of the inquiry, it was found that the charge levelled against the respondent was proved by the department and, therefore, notice was issued to him calling upon him to showcause as to why he should not be dismissed from the service. It appears that due opportunity of hearing was given to him. In furtherance of the said notice, the disciplinary authority ultimately, passed the order of dismissal from the service against the respondent on the basis of the finding that was arrived in at the inquiry.

2.3. The respondent requested the petitioner to take him back in service on his original post, but it was not acceded to. Hence, he raised dispute, which could not be resolved by the Conciliation Officer, ultimately, referred it under Section 10 (1) of the Industrial Disputes Act, 1947 to the Labour Court by way of the aforesaid Reference.

3. At the proceedings, both the sides led evidence. It was the say of the respondent that on that day, he had altercation on account of issuance of the ticket with the said passenger and ultimately he was assaulted by him i.e. the passenger who tore his uniform and also snatched his box. As against that, the petitioner had

produced evidence to show that the respondent was a habitual offender and as many as 34 instances of misconduct were recorded against him prior to the present one. It was, therefore, contended by the petitioner that the order of dismissal did not call for any interference by the Labour Court.

3.1. The Labour Court after going through the material produced before it, confirmed the finding of the Inquiry Officer and came to the conclusion that the guilt of the respondent was duly proved. However, on the question of penalty that was imposed upon the respondent, the Labour Court thought it fit to interfere while exercising powers under Section 11 (A) of the Industrial Dispute Act, 1947 holding it to be grossly disproportionate to the established guilt of the respondent. The Labour Court therefore quashed and set aside the order of dismissal from the service and instead directed the petitioner to reinstate the respondent on his original post with 40% backwages. It substituted the penalty of dismissal with penalty of stoppage of one increment with permanent effect. The Labour Court also thought it fit to award only 40% backwages. It is this judgment and award which is now being challenged by the petitioner in this petition. The respondent has not challenged the award to the extent it denied 60% backwages.

4. Having gone through the record of this petition and having carefully considered the rival submissions, it appears that the respondent during the surprise checking was found to have accepted Re.1=00 from the passenger who had boarded the bus from Shilaj village towards the fare, but had not issued ticket to him, even when the bus had reached Thaltej Talavadi where the said passenger was to get down. The petitioner considered this act as a act of misappropriation of the amount of Re.1=00 and thought it fit to issue chargesheet. This fact was duly established during the course of the inquiry, which the Labour Court confirmed in the proceedings before it. Since there is concurrent finding on this aspect, it is not open for me to come to a different conclusion. Even otherwise, that finding has not been challenged by the respondent. The only question that is required to be seen is whether the Labour Court should have interfered with the quantum of punishment that was imposed upon the respondent by the disciplinary authority while exercising power under Section 11 (A) of the Industrial Disputes Act. The Labour Court has adequately discussed this aspect in the last portion of paragraph 7. It has taken into consideration the fact that there was misappropriation of Re.1=00. In the opinion, of the Labour Court, it was a

minor act of misappropriation for which no order of dismissal from the service could have been passed as such order would amount to causing economic death of the respondent. It was also found by the Labour Court that the respondent was unable to maintain his family and the plight of his family members had become very miserable. The Labour Court, therefore, thought it fit to quash and set aside the order of dismissal. When the Labour Court has exercised power under Section 11 (A) of the Industrial Disputes Act, it is not now open for this Court again to reappreciate the material which was taken into consideration by it, and come to a different conclusion. On the facts and circumstances of the case, it clearly appears that the factors that have been taken into consideration by the Labour Court are correct and that the order of dismissal was grossly disproportionate to the guilt established against the respondent. When such discretion in favour of the respondent is exercised by the Labour Court and considering the facts of the case under Article 227 of the Constitution of India, I am not at all inclined to disturb the same.

4.1. However, this is more so because the petitioner has already reinstated the respondent on his original post in December, 1997 by virtue of this Court's order dated 18th November, 1997 and since then, he has been discharging his duties as conductor with the petitioner.

4.2. However, so far as the direction to pay 40% backwages is concerned, the Labour Court has not assigned any reason as to why that amount is required to be paid to the respondent. In fact, the respondent's past conduct is not at all very clean. On some occasion he has been found to have indulged into similar activity. Apart from that, there are many other acts of misconduct which have been committed by him and which have been duly recorded in his service sheet. When monetary loss has been caused to the petitioner, it will not be proper to award any backwages. The Labour Court's decision to that extent is required to be quashed and set aside and it is hereby, ordered to be quashed and set aside. In other words, the petitioner now will not be required to pay 40% backwages to the respondent. However, it is made clear that reinstatement on the original post would be with continuity of service and the petitioner will work out the present salary which may become payable to the respondent on the basis of the continuity of his service instead of last drawn wage.

With these directions, this petition is partly allowed. Rule is made absolute to the aforesaid extent.

No order as to costs.

[AKSHAY H. MEHTA, J.]

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